

1 MS. HARDING: Which also
2 were not designated 30(b)(6) topics
3 by any person who --

4 MR. BROWN: Can I ask that
5 we just let the witness answer the
6 question?

7 MS. HARDING: Well, I think
8 if you want to ask him questions
9 about topics that were designated
10 that you asked him to become
11 familiar with, then --

12 MR. BROWN: I didn't ask
13 him a question about the tax annex.
14 It was in his answer.

15 MS. HARDING: Well, that's
16 because you asked him about any
17 provision of the Plan. You
18 asked -- we tried to prepare the
19 witness to answer questions about
20 topics that everybody asked about.

21 MR. BROWN: All right.
22 I'll ask my question again. If you
23 have an objection and you want to
24 instruct him not to answer, then do

1 your attention to page 87 of the Plan,
2 Section 7.15, and what I would like you to
3 do, because I have a series of questions
4 about it, is why don't you take a few
5 moments to review Section 7.15. In fact,
6 if you want to take a break at this
7 point --

8 MR. BROWN: Does that make
9 sense? Okay.

10 MS. HARDING: Well, I mean,
11 how long is it, again?

12 THE WITNESS: Seven
13 pages.

14 MS. HARDING: Five-minute
15 break?

16 MR. BROWN: That's fine,
17 yes.

18 (Recess taken.)

19 BY MR. BROWN:

20 Q. Mr. Finke, we had a short
21 break and before that I directed your
22 attention to Section 7.15 of the Plan
23 entitled Insurance Neutrality. Did you
24 have an opportunity to review that section

1 it and we'll move on.

2 BY MR. BROWN:

3 Q. Mr. Finke, as you sit here
4 today looking at the Joint Plan, can you
5 identify particular provisions that you do
6 not understand?

7 MS. HARDING: Object, asked
8 and answered, but answer one more
9 time if you'd like.

10 A. In addition to what I've
11 already identified, the provision on the
12 warrants is not entirely clear to me. And
13 if I spent the time to go through the
14 document page by page, there may be a few
15 other sections that I don't feel very
16 comfortable with in terms of the level of
17 my understanding.

18 Speaking on behalf of W.R. Grace as
19 a whole, there are individuals who
20 understand those sections and, taken as a
21 whole, I think W.R. Grace does have a good
22 understanding of the Plan.

23 Q. Okay. Well, let me take
24 your counsel up on her offer and direct

1 during the break?

2 A. Yes.

3 Q. This was not one of the
4 sections that you mentioned in your prior
5 testimony that you were -- that you did
6 not understand. Is it safe to say that
7 this is a provision that you do
8 understand? And I'm asking that question,
9 really, in your capacity as an individual
10 and as the designee on this subject for
11 the debtors.

12 MS. HARDING: Object to
13 form.

14 A. Yes, I believe I understand
15 it.

16 Q. Okay. Can you turn to
17 Section 11.9 of the Plan, and that's
18 entitled Exculpation, and if you'd take a
19 moment to review that section.

20 (The witness reviews the document.)

21 A. Okay.

22 Q. Given the language in
23 Section 7.15, am I correct that asbestos
24 insurance entities are not bound by the

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exculpation provision in Section 11.9 of the Plan?

MR. LIESEMER: Object to the form.

MS. HARDING: Object to the form.

A. I believe they -- the asbestos insurance companies are bound by Section 11.9.

Q. They are bound?

A. Yes.

Q. If you go back to 7.15, where is that set forth?

MS. HARDING: Object to form.

MR. LIESEMER: Same objection.

A. Well, of course, there's no provision in Section 7.15 that specifically states that the insurers are bound by Section 11.9. I assume that's not what you're asking, but -- well, literally, I think that is what you asked, so --

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Q. Yes, that is what I asked.

A. -- that's my answer then.

Q. So there's nothing in 7.15 that says that they're bound by 11.9 but your testimony is that they are in fact bound by 11.9?

A. Yes.

Q. Are there any other provisions in the Plan that are not specifically spelled out in Section 7.15 for which the insurers are bound notwithstanding Section 7.15?

MS. HARDING: Objection to form, and I think it misstates his testimony.

THE WITNESS: I'm sorry. Could you read back the question?

(The reporter reads the pending question.)

MS. HARDING: Object to form. I think it's confusing, speculative. I don't see how you can possibly answer that question. But if you can answer it, go ahead.

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21 (Pages 78 to 81)

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It also calls for a legal conclusion.

(The witness reviews the document.)

A. Okay. I would direct you to Section 7.15(h) which states that "the asbestos insurance entities shall be subject to the releases and injunctions to the extent described in this Plan" so my answer to your question is that I believe any provisions in the Plan that would constitute a release or an injunction, and I would include 11.9 in that language, are binding on the asbestos insurance entities.

Q. So your testimony is that 7.15(h) includes through its language Section 11.9?

A. Yes, that is how I read it.

Q. What consideration, if any, are Grace's insureds getting under the Plan in exchange for the exculpation provision in 11.9?

MR. LIESEMER: Objection to

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form.

MS. HARDING: Objection to form.

A. All right. First, your question assumes that the insurance entities would be entitled to some consideration in exchange for being bound by Section 11.9. I don't know that to be the case. I don't know that they're not entitled to it either.

But as far as consideration, if one had to justify being bound by Section 11.9 on the basis of consideration, I think the answer with respect to asbestos insurance entities would also apply to all parties involved in the Chapter 11, which is that the entities and individuals covered by the exculpation have been active in the business of these Chapter 11 cases, they have had to take positions, make arguments, make decisions, et cetera, that affect one or more parties involved in the Chapter 11 cases and have thereby exposed themselves to potential liability, I

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22 (Pages 82 to 85)

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suppose, for their acts or omissions. And the Chapter 11 itself could not proceed to the point of resolution without the efforts of these entities and these individuals. So to the extent -- so there is a -- in order to encourage and facilitate the activities of the parties listed in Section 11.9, it is my understanding that it is common in these types of bankruptcies to provide exculpation of those entities and individuals for their activities, and I'm quoting here from 11.9, "In connection with or arising out of the Chapter 11 cases." It is their participation and the fruits of their participation that would constitute consideration.

Q. I want to circle back to a question that I asked a few questions ago concerning 7.15 and I asked you a question to the effect of other than what's specifically set forth in Section 7.15 are there any other provisions in the Plan or Plan documents that are binding upon

A. I could spend the time to look for it if you'd like.

Q. No, let's try this a little differently. Look at 7.15(a).

A. Okay.

Q. It says "Except to the extent provided in this Section 7.15, notwithstanding anything to the contrary in the Confirmation Order, the Plan or any of the Plan documents -- nothing in the Confirmation Order, the Plan or the Plan documents, including any other provision that purports to be preemptory or supervening, shall in any way operate to or have the effect of impairing any asbestos insurance entity's legal, equitable or contractual rights, if any, in any respect." Have I read that correctly?

A. I believe so.

Q. Okay. And what I'm asking is: Given that broad statement, are there any other provisions in the plan that are not set forth in 7.15 that override the

Grace's insurers, and in answer to that question you referred me to subsection (h) and how 11.9 in the debtor's view was encompassed within the language of (h).

So I want to go back to that question and ask: Other than 11.9, is there anything else?

A. I'm --

MS. HARDING: Object to form. I think it's confusing and I'll leave it at that. If you can answer, go ahead.

A. I believe there is a more general provision relating to the binding nature of court orders, findings, et cetera. That is what I was looking for initially in response to your answer and then I remembered the provision in 7.15(h) and so I've directed you to that provision. If you want me to spend the time -- I do not know where in that Plan that more general provision is that I have in mind.

Q. Well --

language in 7.15(a)?

MS. HARDING: Object to form.

A. Based on the language of 7.15(a), and if I'm understanding it as it was intended, it states by its terms that nothing else in the Plan or any of the Plan documents would operate, you know, to impair the -- an asbestos insurance entity's rights.

Q. So is your answer no?

MS. HARDING: Object, asked and answered, but...

A. Based on the language in 7.15(a), my answer would be no, subject to -- subject to wanting to review the remainder of the Plan because, as I mentioned, I do have in mind that there is one or more general provisions concerning the applicability or binding nature of court orders, court findings and the like.

And while I understand 7.15(a) appears to act in such a way that would make my proviso in my answer irrelevant, I

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23 (Pages 86 to 89)

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would still feel more comfortable having found and reviewed those other provisions before giving an unequivocal "no".

Q. Let's do this because we don't want to waste time. Why don't we -- I'm going to continue on. We'll obviously have breaks. And during one of those breaks, why don't you look for whatever provision it is that you -- or provisions that you think you're talking about and then when we return from our break, even if I'm not the questioner, would you bring those one or two sections up to me? That will save us some time.

A. That's fine.

Q. All right. I want to focus your attention now on 7.15(b).

(The witness reviews the document.)

A. Okay.

Q. You see on the second line there rolling over to the third line the phrase "The beneficiaries of the Asbestos PI Trust"? Do you see that?

A. Yes.

Q. What do you understand that term to mean?

MR. LIESEMER: Object to the form.

Q. What does that term mean?

A. I understand it to mean holders of asbestos PI claims.

Q. Okay. And does that include holders of indirect Asbestos PI Trust claims?

MR. LIESEMER: Object to the form.

A. Yes.

Q. And does it include indemnified insurer -- does it -- excuse me.

Does that term include the holders of indemnified insurer TDP claims?

MR. LIESEMER: Object to the form.

A. Is that a defined term?

Q. Good question. It is a term that appears in Section 5.13 of the Trust Distribution Procedures. I don't

know that it is, per se, defined.

MS. HARDING: Where is it in the TDP?

MR. BROWN: It's in Section 5.13.

MR. COHN: Is that on page 49 of the TDP?

MR. BROWN: I don't know the page number.

THE WITNESS: Page 49, yes.

A. Based on Section 5.13 of the TDP and on the basis that a holder of an indemnified insured TDP claim potentially may have that claim paid by the PI Trust in accordance with Section 5.13, I would interpret such a holder to be a beneficiary of the PI Trust.

Q. Okay. So let's just take one of my clients, for example. Let's take Seaton Insurance Company. If Seaton Insurance Company has an indemnified insured TDP claim, then Seaton Insurance Company, as I understand 7.15(b), is bound

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by the Plan, the Plan documents and the confirmation order?

MR. LIESEMER: Object to the form.

MS. HARDING: Object to the form.

Q. Do I have that correct?

A. I believe so, yes.

Q. Okay. And is it bound by the Plan, Plan documents and confirmation order insofar as it may also be listed as being a partially settled insurer?

MS. HARDING: Object to the form. And are you referring to 7.15(b)?

MR. BROWN: Yes.

MS. HARDING: Back to 7.15(b) when you asked that question?

MR. BROWN: Yes.

A. I'm not sure I see the connection between Section 5.13 of the TDP and your question, if there is any. The -- I believe the answer is they are

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24 (Pages 90 to 93)

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1 bound to the same extent any asbestos
 2 insurance entity is bound under the
 3 Plan.

4 Q. Mr. Finke, you understand,
 5 don't you, that -- well, let's not do it
 6 that way. Let's go to -- I think it's the
 7 asbestos insurance transfer agreement.

8 MS. HARDING: Is that one
 9 of our exhibits?

10 MR. BROWN: No, I'm sorry,
 11 it's not that. It's Exhibit 5.

12 Q. Do you have Exhibit 5?

13 A. Retained causes of action?

14 Q. No. This is Exhibit 5 to
 15 the Exhibit Book.

16 A. To the Exhibit Book.

17 MS. HARDING: I have a
 18 copy. It's not his but you can
 19 look at it if you'd like.

20 MR. COHN: What is the
 21 document?

22 MS. BAER: It's Exhibit 5
 23 to the Exhibit Book, Schedule of
 24 Settled Asbestos Insurers.

1 there are indemnity claims against the
 2 debtor and to the extent that those are
 3 asbestos-related, those fit within the
 4 defined term "indemnified insured TDP
 5 claims", correct?

6 MS. HARDING: Object to
 7 form.

8 MR. LIESEMER: Join.

9 MS. HARDING: Are you
 10 looking for 7.15?

11 MS. ALCABES: 5.13.

12 MS. HARDING: There you go.

13 A. No, I don't agree.

14 MR. BROWN: Could you read
 15 back the last question?

16 (The reporter reads the
 17 requested portion.)

18 A. No, I don't agree. My
 19 understanding of Section 5.13 is this
 20 provision would take effect only upon
 21 confirmation of the Plan since the
 22 definition indicates, or requires, that
 23 the indemnified insurer TDP claim is
 24 channeled to the PI Trust, which it can't

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1 (Exhibit 5 to Exhibit Book,
 2 Schedule of Settled Asbestos
 3 Insurers Entitled to 524(g)
 4 Protection marked for
 5 identification as Exhibit
 6 Finke-9.)

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7 Q. What I'd like you, Mr.
 8 Finke -- first of all, why don't you
 9 identify what we've just marked as Exhibit
 10 9?

11 A. Okay. Finke Exhibit 9 is
 12 Exhibit 5 to the Exhibit Book. It is
 13 entitled Schedule of Settled Asbestos
 14 Insurers Entitled to 524(g) Protection.

15 Q. Now, you understand, don't
 16 you, that at least some of the insurance
 17 companies that are listed on this schedule
 18 have indemnity claims against the
 19 debtors?

20 MR. LIESEMER: Object to
 21 the form of the question.

22 A. Yes, I believe that's
 23 correct.

24 Q. And to the extent that

1 be at this point.

2 Q. All these questions are in
 3 the context of the Plan being confirmed.

4 A. Well, then I don't --

5 Q. Let me back up. I think
 6 the record's kind of muddled at this
 7 point.

8 A. Okay.

9 Q. Why don't you -- if you
 10 look at the schedule of settled asbestos
 11 insurance companies, I believe you'd
 12 testified -- that's Exhibit 9 -- I believe
 13 you'd testified that some of the companies
 14 that are listed on there have contractual
 15 indemnity claims against the debtors.

16 A. That was under the
 17 assumption we were talking about current
 18 claims. I didn't realize you had -- that
 19 your questions were all in the context of
 20 the assumption of a confirmed plan.

21 Q. All right. If you look at
 22 the schedule, you understand that the
 23 insureds that are listed on here have
 24 settlement agreements with the debtors,

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1 correct?

2 A. Yes.

3 Q. And you also understand
4 that certain of those settlement
5 agreements have contractual indemnity
6 provisions in them, correct?

7 A. Yes.

8 Q. And I believe you testified
9 that those contractual indemnity
10 provisions are under the Plan to be
11 treated as indemnified insured TDP claims
12 under Section 5.13 of the TDP. Is that
13 correct?14 A. No, no, that certainly
15 wasn't my intent.16 Q. Okay. How are they being
17 treated under the Plan?18 A. As indirect PI Trust
19 claims.20 Q. Okay. Do you understand
21 indemnified insured TDP claims to be a
22 class of indirect PI Trust claims?23 A. It appears to me to be
24 that, that they are the same. Or at leastPP's Obj:
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1 Q. Let's get back to the
2 insurance neutrality provision then, which
3 is 7.15.

4 A. Okay.

5 Q. Getting back to 7.15(b),
6 this line of questioning talked with or
7 started with the reference to the term,
8 the phrase, "the beneficiaries of the
9 Asbestos PI Trust".

10 A. Uh-huh.

11 Q. I'm a little confused by
12 your testimony at this point. If you are
13 the holder of an indemnified insurer TDP
14 claim post-confirmation, are you a
15 beneficiary of the Asbestos PI Trust?16 MR. LIESEMER: Object to
17 the form of the question.18 MS. HARDING: Object to
19 form.20 A. Assuming for the sake of
21 argument such a claim could arise, my
22 understanding would be yes.23 MR. BROWN: All right. I'm
24 going to shift gears. We'll markPP's Obj:
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1 I don't see a distinction. Whether they
2 are intended to be or not, I don't know.
3 Since we really were not involved in the
4 drafting of the TDP, my --5 Q. The "we" you're referring
6 to is Grace?7 A. Grace, yes. My bigger
8 problem is that once the plan is confirmed
9 I don't understand -- have not understood
10 and don't today how there can be such a
11 claim under 5.13 since my understanding of
12 the mechanics of the asbestos PI
13 channeling injunction is that any claim
14 against a settled insurer which is an
15 asbestos protected party would be barred
16 and that claim would be channeled to the
17 PI Trust and that holder of that PI
18 claim, the sole resolution -- not
19 resolution -- the sole source for any
20 recovery for the holder of that claim is
21 the PI Trust.22 So I have not understood, and still
23 don't, how any indemnified insurer TDP
24 claim could arise.PP's
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1 another document. The document I'm
2 about to mark is one of our
3 settlement agreements so we can
4 mark this portion of the deposition
5 subject to the protective order but
6 what I would like to do with this
7 one, like we did with Mr. Posner,
8 to the extent that no one objects
9 to the extent that we, my clients,
10 would like to use this portion of
11 the testimony without having it
12 under seal, we would be able to do
13 so without asking all parties to
14 agree. Is that fair?15 MS. HARDING: That's up to
16 you.

17 MR. BROWN: All right.

18 MR. LEWIS: Did you say
19 Mr. Posner?

20 MR. BROWN: Yes.

21 MR. LEWIS: Okay.

22 (Settlement Agreement
23 Bates stamped OB 1 through 33
24 marked for identification as

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25 (Pages 94 to 97)

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1 about or been asked about the scenario 2 you're describing.	1 the definition or description of an 2 indemnified insured TDP claim.
3 Q. But if the claim is 4 asserted by the insurers against Fresenius 5 Medical Care Holdings, it's being asserted 6 against a non-debtor, correct?	3 Q. Okay. Let me ask you this 4 then: What is the operative injunction in 5 the Plan that accomplishes both the 6 enjoining and channeling of the claim that 7 we're talking about; namely, a claim for 8 contractual indemnity running from the 9 insurers against Fresenius Medical Care 10 Holdings, Inc.?
7 MS. HARDING: Object to 8 form. 9 A. In the first instance, 10 yes.	11 A. The -- 12 MS. HARDING: Object to 13 form. 14 MR. LIESEMER: Object to 15 form. 16 A. The asbestos PI channeling 17 injunction.
11 Q. And that would then take it 12 outside the definition of indirect PI 13 Trust claims which by definition have to 14 be against the debtor, right?	18 Q. Does the successor claims 19 injunction in the Plan also enjoin the 20 claim?
15 MS. HARDING: Just object 16 to form in terms of the 17 hypothetical. I'm not sure where 18 we are in the hypothetical, but go 19 ahead. 20 A. Well, I understand what 21 you're saying and, yes, if you were to 22 stop right there I would agree with you. 23 But when you add in what I think is a 24 fact, which is that Grace would owe an	21 MR. LIESEMER: Object to 22 form. 23 MS. HARDING: Object to 24 form to the extent we're still
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1 indemnification obligation to FMCH in 2 those circumstances, the reality of your 3 hypothetical is that the claim would 4 be ultimately a claim against the 5 debtors.	1 talking about the hypothetical. 2 A. No, I don't believe so. 3 Q. All right, I want to ask 4 you now, Mr. Finke, a sort of more broad 5 question. Class 6 includes, among other 6 things, individual asbestos claimants' 7 claims against Grace, correct?
6 Q. So is it your testimony on 7 behalf of Grace that the claim I've 8 described, running from the insurers 9 against Fresenius, that is in fact an 10 indirect PI Trust claim?	8 MS. HARDING: Object to 9 form. 10 MR. LIESEMER: Join. 11 A. Did you say asbestos claims 12 or asbestos PI claims? 13 Q. I'm using it generically. 14 Fair enough, that's a fair -- the 15 purpose -- Grace has been sued in a number 16 of asbestos personal injury claims, 17 correct?
11 MS. HARDING: Object to 12 form. 13 MR. LIESEMER: Object to 14 form. 15 A. That is my view, yes. 16 Q. Is it also your view that 17 that claim would be an indemnified insurer 18 TDP claim as described in Section 5.13 of 19 the TDP?	18 A. Yes. 19 Q. Okay. And those claims, 20 among other claims, are classified as 21 Class 6 under the Plan, right?
20 MS. HARDING: Same 21 objection. 22 MR. LIESEMER: Object to 23 form. 24 A. Yes, it does appear to fit	22 A. Yes. 23 Q. And indirect PI Trust 24 claims that we've just been discussing,

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<p>Page 114 PP's Cte</p> <p>1 they're also Class 6 claims, correct? 2 A. Correct. 3 Q. And indemnified insurer TDP 4 claims are also Class 6 claims, correct? 5 A. I believe so but I'm going 6 to go back and reread the definition 7 again.</p> <p>8 Q. Okay. 9 (The witness reviews the document.) 10 A. Yes.</p> <p>11 Q. Can you describe for me the 12 factual basis for putting all of those 13 claims in the same class?</p> <p>14 MS. HARDING: Object to 15 form. Calls for -- to the extent 16 that it calls for a legal 17 conclusion and -- 18 A. I would refer to the -- 19 THE WITNESS: I'm sorry. 20 MS. HARDING: -- and 21 attorney-client work product 22 privileges to the extent that they 23 apply. But if you can still 24 answer, go ahead.</p>	<p>1 of asbestos PI claims. It is those -- 2 those set of circumstances that result in 3 all of these claims being classified as 4 Class 6 claims.</p> <p>5 Q. What are the similarities 6 between the claims; that is, between the 7 personal injury claims and the contractual 8 indemnity claims, if any?</p> <p>9 MS. HARDING: Object to 10 form.</p> <p>11 MR. LIESEMER: Object to 12 form.</p> <p>13 A. Assuming you're referring 14 to contractual indemnity claims arising 15 out of, directly or indirectly, an 16 asbestos PI claim, the similarity is that 17 the underlying claim is by a person who 18 alleges -- and I'm just paraphrasing 19 because I don't want to read this entire 20 definition -- but alleges that he has 21 contracted an asbestos-related disease due 22 to exposure to asbestos from a Grace 23 product or operation.</p> <p>24 Q. Anything else?</p>
<p>Page 115 PP's Cte</p> <p>1 A. My answer would be to refer 2 to the terms of the Plan and the 3 definitions. The definitions of asbestos 4 PI claims would incorporate the factual 5 basis of those claims.</p> <p>6 Q. All right. I'm asking a 7 broader question, I think, Mr. Finke, and 8 I'm not asking for a legal conclusion. 9 MS. HARDING: Okay. 10 And -- 11 Q. I'm asking for what is it 12 that's factually similar about these 13 claims that warrants in the debtor's view 14 placing them all into Class 6. 15 MS. HARDING: Object to 16 form. 17 MR. LIESEMER: Object to 18 form. 19 MS. HARDING: Foundation 20 and it... 21 A. I may be misunderstanding 22 your broad question, but I have to again 23 respond by referring to the factual 24 circumstances laid out in the definition</p>	<p>Page 117 PP's Cte</p> <p>1 MS. HARDING: Object to 2 form. 3 A. I don't understand your 4 question.</p> <p>5 Q. My question is: Is there 6 any other basis for classifying the 7 contractual indemnity claims that we've 8 just been discussing with the personal 9 injury claims, the asbestos personal 10 injury claims?</p> <p>11 MS. HARDING: Object to 12 form. 13 A. The basis I've laid out for 14 the definition of asbestos PI claims. 15 Q. Okay. Mr. Finke, why are 16 contractual indemnity claims arising from 17 the asbestos claims that you just 18 described placed into Class 6 while other 19 contractual indemnity claims against Grace 20 are placed into Class 9?</p> <p>21 MS. HARDING: Object to 22 form and to the -- and object to 23 the extent it calls for a legal 24 conclusion. If you can answer, go</p>

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1 ahead.

2 A. Because the contractual
 3 indemnity claims that arise based out of
 4 an asbestos PI claim all seek to impose
 5 liability upon the debtors as a result of
 6 the debtors' asbestos-related products or
 7 operations.

8 Q. Okay. Is Fresenius a
 9 separate entity from any of the debtors
 10 today?

11 MS. HARDING: Object to
 12 form.

13 Q. Separate legal entity.

14 A. Yes.

15 Q. How about Sealed Air
 16 Corporation? Is that a separate legal
 17 entity?

18 A. Yes.

19 Q. And they're both
 20 non-debtors, correct?

21 A. Correct.

22 Q. Are they -- do they have
 23 separate -- does Fresenius and the debtors
 24 have separate management?

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1 Q. Do any of the debtors
 2 control Fresenius?

3 A. No.

4 Q. Do any of the debtors
 5 control Sealed Air?

6 A. No.

7 MR. BROWN: How did we mark
 8 the transfer agreement?

9 MS. BAER: The insurance
 10 transfer agreement is Exhibit 4.
 11 (Off the record.)

12 BY MR. BROWN:

13 Q. We talked about this
 14 earlier. Can you take a look at Schedule
 15 1 to Exhibit 4?

16 A. Yes.

17 Q. My question is: Does
 18 Fresenius have any rights under the
 19 policies listed on Schedule 1?

20 MS. HARDING: Object to
 21 form.

22 A. I don't believe so.

23 Q. How about Sealed Air?

24 A. I don't believe so.

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1 A. Yes.
 2 Q. And would your answer be
 3 the same with respect to Sealed Air and
 4 the debtors?

5 A. Yes.

6 Q. Does Fresenius and the
 7 debtors or do Fresenius and the debtors
 8 have any shared operations?

9 A. Not that I'm aware of.

10 Q. Do Sealed Air and the
 11 debtors have any shared operations?

12 A. Not that I'm aware of.

13 Q. Do any of the debtors have
 14 any ownership interest in Fresenius?

15 MS. HARDING: Object to
 16 form.

17 A. I don't know but I'm not
 18 aware of any.

19 Q. Do any of the debtors have
 20 any ownership interest in Sealed Air?

21 MS. HARDING: Same
 22 objection.

23 A. Again, I don't know but I'm
 24 not aware of any.

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1 MR. BROWN: Why don't we
 2 take a five-minute break. I may be
 3 finished.

4 MS. HARDING: Okay.

5 (Recess taken.)

6 BY MR. BROWN:

7 Q. Mr. Finke, I have a few
 8 more questions for you and then I'll pass
 9 you along to the next questioner.

10 Can you take a look at Section 11.9
 11 of the Plan again? That's the exculpation
 12 provision.

13 A. Yes.

14 Q. Do you understand the scope
 15 of the exculpation provision in terms of
 16 the entities and individuals that are
 17 actually exculpated under this
 18 provision?

19 MS. HARDING: Object to
 20 form.

21 A. Yes, I believe I do.

22 Q. Okay. Well, let me give
 23 you a couple of examples. It's includes
 24 the Asbestos PI Committee, correct?

CI

CI

CI

PP's
Obj:
R:
BE

PP's
Obj:
R:
BE

A. Yes.

Q. And we talked a little about the Asbestos PI Committee being individual asbestos claimants, correct?

A. Yes.

Q. And you testified that, by and large, they perform their duties as committee members through their asbestos personal injury counsel, correct?

A. Correct.

Q. Okay. And that would include, among other individuals, Mr. Rice and his law firm, correct?

A. Yes, I believe that's right.

Q. And Mr. Cooney and his law firm?

A. Well, I guess what I don't know is which of the -- which of the asbestos plaintiffs' attorneys we've identified are -- or have clients that are members of the committee. I just don't recall.

Q. Okay, fair enough.

There are also -- the TAC is within the scope of this exculpation provision, correct?

A. Yes.

Q. So it would include the TAC members, Mr. Weitz, Mr. Cooney, Mr. Budd and Mr. Rice, correct?

A. Correct.

Q. And to the extent that the firms -- to extent that any members of the Asbestos PI Committee are represented by the firms of Mr. Cooney, Mr. Rice, Mr. Weitz and Mr. Budd, they too would be covered by it, correct?

A. Correct.

MS. HARDING: Object to form.

Q. All right. Now, about halfway down the provision it has a phrase that says "or any of their respective Representatives". Do you see that?

A. Yes.

Q. And Representatives is in initial cap R, correct?

PP's Obj: R; BE

A. Yes.

Q. Why don't you go to the defined term Representatives which appears at 33 of the Joint Plan. It's definition number 177.

MS. HARDING: I think I lost the line of -- did you previously ask if the TAC was covered --

MR. BROWN: Yes.

MS. HARDING: -- by the exculpation in 11.9?

MR. BROWN: Yes.

MS. HARDING: I'm just looking and I don't see that so I just wanted to make sure that the record wasn't unclear.

MS. BAER: Barbara.

MR. BROWN: Asbestos PI Trust Advisory Committee.

MS. HARDING: All right.

MR. BROWN: We're happy to have it taken out.

MS. HARDING: No, no. I

PP's Obj: R; BE

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was talking because I was going too fast and I just didn't see it and I wanted to make sure.

A. Okay.

Q. Sitting here today and looking at the defined term Representatives and seeing its use in Section 11.9 of the Plan, do you have any idea of the scope of this exculpation provision in terms of who's covered by it?

MS. HARDING: Object to form.

A. Well, certainly the definition of Representatives gives me an idea as to the scope of the exculpation provision.

Q. Okay. But I mean the actual identities of the individuals, you couldn't -- you couldn't give me a list today, could you?

A. No.

Q. Okay.

A. I could not.

PP's Obj:

R; BE

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33 (Pages 126 to 129)

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PP's Obj:
R; BE;
F

Q. Do you have any idea who the advisors or consultants are of Mr. Cooney's firm or Mr. Weitz's firm or Mr. Rice's firm or --

A. No.

MS. HARDING: Object to form.

A. No, I do not.

Q. Okay. How does the court know if it confirms this Plan who all's covered by the exculpation provision, given the breadth of the definition of Representatives?

MS. HARDING: Object to form --

MR. LIESEMER: Object to form.

MS. HARDING: -- to the extent it calls for a legal conclusion.

A. I would be speculating that perhaps they'll be -- those individuals would be identified to the court at some point, but I don't know.

Q. Do you know how far back the exculpation provision goes in terms of time?

A. No, because it's -- it's not set up to be framed in terms of a beginning date and an end date. It's -- the scope of the provision relates to conduct in connection with or arising out of the Chapter 11 cases so that, to my understanding, that could encompass conduct before the Chapter 11 cases were commenced, conduct afterwards.

Q. How long before it was commenced?

MS. HARDING: Object to form.

A. The provision does not say.

MR. BROWN: Okay. All right. I think with that I'm going to pass you along to Miss Alcabes, and I may -- I'll reserve the right for any follow-up questions after the others have finished. Thank

you.

THE WITNESS: You're welcome.

EXAMINATION BY
MS. ALCABES:

Q. Good afternoon, Mr. Finke.

My name is Elisa Alcabes. I'm counsel for Travelers Casualty & Surety Company. We've met before.

A. Yes.

Q. Can you just tell me what you did to prepare for your deposition today?

A. I reviewed the Plan; a number of the exhibits to the Plan, some more than once; met with counsel, Grace's bankruptcy counsel, to discuss various provisions of the Plan and related documents. I'm trying to think if there is anything else. Read the deposition transcript of Peter Lockwood and listened to the -- listened in on the deposition of Jeff Posner which I viewed as preparation for this deposition. That's all I can

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recall at this point.

Q. About how much time did you spend with Grace's bankruptcy counsel preparing?

A. About 15 hours.

Q. And you said you listened in on the Posner deposition. Do you agree with the testimony that Mr. Posner provided?

MS. HARDING: Object to form.

A. Yes, I do. I can't think of anything that I disagreed with so I would say, in general, yes.

Q. And you said previously that you generally agreed with the deposition testimony of Mr. Lockwood as well, correct?

A. Correct.

Q. You mentioned that there was one point in his deposition where he seemed to have equated coverage in place with the reimbursement agreements. Is that right.

PP's Obj:
R; BE;
F

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PP's
obj:
R;
BE;
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1 A. Yes.

2 Q. Do you recall whether there
3 was a substantive issue that you had with
4 it or whether he just seemed to have
5 inadvertently referred to reimbursement
6 agreements as coverage in place?

7 A. I would -- I don't know if
8 there was -- I don't recall having a
9 substantive disagreement. At the time I
10 was -- I had focused on the defined terms
11 and if he was using those terms as defined
12 terms in the Plan, then it occurred to me
13 that he was making an incorrect statement
14 since, of course, he's speaking and didn't
15 identify them as whether or not he was
16 referring to them as defined in the Plan.
17 He may or may not be incorrect in equating
18 the two; I don't know.

19 Q. I'm going to represent that
20 we've looked through the Lockwood
21 transcript and I'm not sure which
22 reference you're talking about and we
23 would like to understand what it is that
24 you were disagreeing with to the extent it

1 A. That the insurance company
2 agreed to pay a definite amount of money
3 in exchange for an indemnification
4 agreement from Grace to indemnify the
5 insurer in the event that claims were made
6 against -- in the event that asbestos
7 claims were made against the policy.

8 Q. And can you turn to
9 Schedule 3 which is the schedule of
10 asbestos insurance reimbursement
11 agreements?

12 A. Yes.

13 Q. Did you review any of those
14 agreements prior to your deposition?

15 A. No.

16 Q. Have you ever seen any of
17 the agreements?

18 A. No, I have not.

19 Q. Are you generally familiar
20 with what the agreements say?

21 A. Again, on a very general
22 level.

23 Q. What's your general
24 understanding?

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C1

1 may be substantive so we would ask during
2 a break or subsequent to the deposition if
3 you would please let us know which portion
4 of the transcript you're referring to.

5 Right now, can you turn to what's
6 been marked as Finke Exhibit 4, which is
7 the transfer agreement, and turn to
8 Schedule 2. That's the schedule of
9 asbestos insurance settlement agreements, F
10 correct?

11 A. Correct.

12 Q. And in preparation for your
13 deposition, did you review any of these
14 agreements?

15 A. No, I did not.

16 Q. Are you generally familiar
17 with any of the agreements?

18 A. No, I am not.

19 Q. Do you have a general
20 understanding of what the agreements
21 provide?

22 A. Very general.

23 Q. What's your general
24 understanding?

1 A. That the parties to the
2 agreement worked out procedures or
3 protocols pursuant to which the insurers
4 would reimburse the insured party in whole
5 or in part for asbestos claims paid by the
6 insured.

7 Q. To your understanding, who
8 was the insured party that you're
9 referring to?

10 A. Grace or one of the Grace
11 debtors.

12 Q. Do you have an
13 understanding of the obligations that
14 Grace undertook in executing those
15 agreements?

16 A. No.

17 Q. Do you have a general
18 understanding?

19 A. No, I don't.

20 Q. Do you have an
21 understanding that Grace undertook to
22 perform a certain allocation with respect
23 to claims that were going to be -- with
24 respect to claims that they were going to

<p>1 to our rights.</p> <p>2 MR. LIESEMER: Well, wait a</p> <p>3 minute. There was a dialogue</p> <p>4 between the Libby claimants'</p> <p>5 representatives and the ACC with</p> <p>6 respect to the TDP. They weren't</p> <p>7 completely shut out of the --</p> <p>8 MR. LEWIS: That's the only</p> <p>9 thing that was discussed with us,</p> <p>10 that is correct, counsel.</p> <p>11 Q. In any event, I'll get on</p> <p>12 to the next area because counsel's</p> <p>13 directed you not to answer any questions</p> <p>14 concerning the first matters relating to</p> <p>15 the Plan. The second one is the funding</p> <p>16 of the asbestos PI Trust including value</p> <p>17 at time of negotiation of assets to be</p> <p>18 used to fund the Asbestos PI Trust. Oh,</p> <p>19 I'm sorry, I've got the wrong man there.</p> <p>20 That's LaForce.</p> <p>21 Go to asbestos -- go to injunctions</p> <p>22 on page 10. The first area is the</p> <p>23 asbestos PI channeling injunction. You're</p> <p>24 designated to testify about that?</p>	<p>1 holders of those claims.</p> <p>2 Q. And that's covered in</p> <p>3 Section 8.2 --</p> <p>4 A. Correct.</p> <p>5 Q. -- of the amended Plan of</p> <p>6 Reorganization, correct?</p> <p>7 A. Correct.</p> <p>8 Q. By the way, you indicated</p> <p>9 in earlier testimony that there are -- or</p> <p>10 suggested that there might be more</p> <p>11 discussion or more changes or changes</p> <p>12 coming to this Plan.</p> <p>13 A. I don't recall discussing</p> <p>14 that, but --</p> <p>15 Q. I thought you said that</p> <p>16 there were issues that hadn't been</p> <p>17 resolved related to this Plan. Maybe I</p> <p>18 misunderstood you.</p> <p>19 A. There are details -- what I</p> <p>20 recall talking about are details with</p> <p>21 respect to some of the Plan documents that</p> <p>22 need -- still need to be worked out. I</p> <p>23 don't recall addressing whether there</p> <p>24 would be changes to the Plan, although I</p>
<p>Page 199</p> <p>1 A. Yes.</p> <p>2 Q. And you're familiar with</p> <p>3 the asbestos PI channeling injunction and</p> <p>4 the effect it has on those of interest to</p> <p>5 this litigation?</p> <p>6 MS. HARDING: Object to</p> <p>7 form.</p> <p>8 A. Yes.</p> <p>9 Q. First of all, what is a</p> <p>10 channeling injunction?</p> <p>11 A. It's --</p> <p>12 MS. HARDING: Just object.</p> <p>13 Are you asking him under the -- the</p> <p>14 definition of channeling injunction</p> <p>15 under this Plan or just generally?</p> <p>16 MR. LEWIS: I'm just asking</p> <p>17 him what a channeling injunction</p> <p>18 is, what is his understanding of a</p> <p>19 channeling injunction.</p> <p>20 A. An injunction that requires</p> <p>21 holders of certain types of claims to</p> <p>22 pursue those claims only against, as in</p> <p>23 this case, the Asbestos PI Trust. It</p> <p>24 makes the Trust the sole recourse for</p>	<p>Page 201</p> <p>1 believe there -- well, the Plan itself</p> <p>2 provides for the ability to modify it.</p> <p>3 Q. Now, this is the first</p> <p>4 Amended Joint Plan. Is there a second</p> <p>5 Amended Joint Plan in the offing or does</p> <p>6 this look like it, for the most part?</p> <p>7 A. I expect there will be some</p> <p>8 changes to this Plan before -- before</p> <p>9 final confirmation.</p> <p>10 Q. Let's go to Section 8.1</p> <p>11 relating to channeling injunctions -- the</p> <p>12 channeling injunction -- excuse me -- and</p> <p>13 8.2. I apologize.</p> <p>14 A. Uh-huh.</p> <p>15 Q. Does that treat the Libby</p> <p>16 claimants, PI claimants, just like all</p> <p>17 other PI claimants?</p> <p>18 A. Yes.</p> <p>19 (Mr. Plevin enters the</p> <p>20 deposition room)</p> <p>21 Q. Okay. Now, the second area</p> <p>22 of inquiry was development of asbestos PI</p> <p>23 channeling injunction among Plan</p> <p>24 proponents, including negotiations, other</p>
	C1 <div style="background-color: #90EE90; border: 1px solid green; padding: 5px; margin-top: 5px;"> PP's Obj: R; BE; F </div>

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1 gave relating to the 17 Maryland Casualty
 2 topics to which you as the Grace
 3 designated representative disagree?

4 A. No.

5 Q. I wanted to ask you some
 6 questions about the so-called independent
 7 claims against Maryland Casualty that Mr.
 8 Lewis asked you about. During his
 9 deposition, Mr. Lockwood gave an example
 10 of what he deemed to be an independent
 11 claim, and I'll quote from page 517 of his
 12 deposition transcript.

13 Mr. Lockwood said: "I mean, if
 14 somebody in Libby, Montana is run over by
 15 an insurer's truck on the way to work, of
 16 course the injunction doesn't bar the
 17 claimant from suing that insurer."

18 My question for you, Mr. Finke: Is
 19 do you agree with that example as an
 20 example of an independent claim --

21 A. Yes.

22 Q. -- if it existed?

23 A. Yes.

24 Q. Now, as to the Plan's

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1 Plan treatment of so-called independent
 2 claims against Maryland Casualty?

3 A. Yes, because I hadn't -- I
 4 hadn't considered my earlier answer
 5 viewing it from the perspective of the
 6 terms or scope of the indemnification
 7 obligation by Grace, which is what this
 8 testimony relates to.

9 Q. Mr. Lockwood's testimony?

10 A. Yes. Sorry.

11 Q. And, Mr. Finke, would you
 12 agree with me that there's no provision of
 13 the Plan that expressly carves out Libby's
 14 so-called independent claims against
 15 Maryland Casualty from the asbestos PI
 16 channeling injunction?

17 A. I would agree with that.

18 MR. WISLER: That's all I
 19 have. Thank you.

20 EXAMINATION BY

21 MR. COHN:

22 Q. Mr. Finke, Jay Cohn for
 23 Federal Insurance Company.

24 Earlier you weren't able to testify

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1 treatment of any other so-called
 2 independent claims by the Libby claimants,
 3 I'm going to ask you to please read from
 4 page 525, line 1 through 527, line 24 of
 5 the transcript of Mr. Lockwood's
 6 deposition and then I'm going to ask you a
 7 question.

8 A. Okay.

9 Q. I'm going to ask you a
 10 couple of questions.

11 A. Okay.

12 Q. Take your time, please.

13 MS. HARDING: 525, line one
 14 through 527, line 24?

15 MR. WISLER: Correct.

16 (The witness reviews the document.)

17 A. Okay.

18 Q. As the designated Grace
 19 representative, do you agree with the
 20 testimony of Mr. Lockwood that you just
 21 read?

22 A. I do, yes.

23 Q. And does that testimony
 24 clarify your earlier testimony about the

1 about the TDPs. Is that because Grace had
 2 nothing to do with the formulation of the
 3 TDPs?

4 A. No.

5 MS. HARDING: Object to
 6 form but go ahead.

7 THE WITNESS: Sorry.

8 A. No. The primary reason is
 9 that Grace -- while Grace was not a
 10 principal drafter of the TDPs, when we
 11 were provided with a draft, I asked Jay
 12 Hughes to review it and provide any
 13 comments that he had on it, and of course
 14 we all -- our outside counsel also
 15 reviewed it. But, in essence, I delegated
 16 responsibility to Jay since he is much
 17 more familiar with the personal injury
 18 litigation, claims history, disease
 19 levels, et cetera. So I personally am not
 20 the most knowledgeable at Grace about the
 21 TDPs.

22 Q. Does W.R. Grace have an
 23 understanding of what the concept of
 24 insurance neutrality means?

PP's
obj:
R

PP's
obj:
R

PP's Obj:

R Page 290

1 A. Yes.

2 Q. Could you explain to me
3 what W.R. Grace's concept -- understanding
4 of that concept is?5 MS. HARDING: Just object
6 to form to the extent it calls for
7 a legal analysis or legal
8 conclusions. To the extent that
9 you can answer...10 A. I think our understanding
11 of insurance neutrality is well worded in
12 Section 7.15(a), which is that none of the
13 Plan provisions, other than a few specific
14 exceptions, will operate to impair any of
15 the asbestos company's contractual rights
16 under their policies or settlement
17 agreements or reimbursement agreements.18 Q. Okay. So if you were to
19 carve out the first independent clause of
20 7.15(a) which reads: "Except to the
21 extent provided in this Section 7.15," the
22 balance of that paragraph sets forth W.R.
23 Grace's understanding of the concept of
24 insurance neutrality; is that right?1 MS. HARDING: Object to
2 form.3 A. I don't entirely agree with
4 your statement or your question because I
5 think the definitions of certain terms,
6 and in particular the asbestos insurance
7 coverage defenses, also relates to our
8 understanding of insurance neutrality.
9 Specifically, that that -- that definition
10 identifies a couple of defenses that the
11 insurance companies would not be able to
12 assert after confirmation.13 Q. Those would be exceptions
14 to a true insurance neutrality, right?15 MS. HARDING: Object to
16 form and to the extent that it
17 calls for a legal conclusion.

18 A. Yes.

19 Q. Thank you.

20 Are you familiar with the UNR
21 decision from the Seventh Circuit?22 A. I've heard of it. I've not
23 read it. I have a very general
24 understanding of --

74 (Pages 290 to 293)

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1 Q. Could you tell me --

2 A. -- what the holding --

3 Q. Could you tell me your
4 understanding of what happened in UNR?5 MS. HARDING: Object to
6 form, object to the extent that it
7 calls for Mr. Finke's legal
8 analysis of the decision and I
9 think it's overly broad and
10 impossible to answer. But to the
11 extent that you can answer...12 MR. FREEDMAN: Do you have
13 a copy of the case or citation,
14 just to make sure we're talking
15 about --16 MR. COHN: 992 Fed 2nd.
17 1101.18 MS. HARDING: And I also
19 object to the extent that the
20 questioning is seeking to have a
21 discussion with the witness about
22 the legal conclusions that the
23 Court might or might not reach as
24 to the Plan and the application of

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1 certain precedent in law. I think
2 it's improper.3 Q. Do you need to hear the
4 question again?

5 A. Yes, I do.

6 (The reporter reads the
7 record as follows:8 "QUESTION: Could you tell
9 me your understanding of what
10 happened in UNR?"11 MS. HARDING: Object. Are
12 you asking about the decision or
13 what happened in the case?14 MR. COHN: What the result
15 was to the insurer in that case.16 A. My understanding is that
17 the court --18 MS. HARDING: Same
19 objections but go ahead.20 A. -- held that the
21 confirmation of a Plan of Reorganization
22 triggered insurers' obligations to pay.23 Q. Okay. I will represent to
24 you that UNR as part of its settlement wasPP's
Obj:
RPP's
Obj:
R

PP's Obj:

75 (Pages 294 to 297)

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1 to pay 150 million dollars of its stock
 2 into the Trust and that the holding was
 3 that the confirmation of that Plan
 4 required the insurer to immediately pay
 5 UNR the value of that stock. And my
 6 question to you is: Is it the intention
 7 of the insurer neutrality Plan provision
 8 in this Plan to protect the insurers from
 9 such a result in this case?

10 A. I believe that it is
 11 Grace's intent, yes.

12 MR. COHN: Okay, I have no
 13 other questions.

14 MR. BROWN: I have a couple
 15 of follow-ups.

16 MS. HARDING: Anybody on
 17 the phone that has questions?

18 MR. KRAMER: I know Dan
 19 Speights will have questions.

20 MR. DOWNEY: I have
 21 questions. This is Phil Downey for
 22 Scotts but I'm happy to wait my
 23 turn.

24 MR. COHN: If I may suggest

1 How is the State classified under
 2 the Plan?

3 MS. HARDING: Object to
 4 form. Go ahead, to the extent you
 5 know.
 6 A. As a Class 6 indirect PI
 7 Trust claim.

8 Q. What is the basis for that
 9 classification?

10 A. Well --

11 MS. HARDING: I'm just
 12 going to object to the extent that
 13 it calls for attorney-client
 14 privilege or work product
 15 communications. To the extent you
 16 can answer without divulging that,
 17 then go forward. And to the extent
 18 that -- I do agree that it's broad
 19 and I'm not sure I understand what
 20 he's asking about, but if you do,
 21 Richard, go ahead.

22 A. My answer is going to be
 23 the definition of indirect PI Trust claim
 24 in the Plan.

1 that PD be held to the end?

2 MS. HARDING: Yeah, so
 3 we'll wait for PD folks to the end.
 4 Are there insurers on the phone
 5 that have any questions? Any
 6 insurers on the phone? No?

7 MR. MANGAN: I may have
 8 questions. This is Kevin Mangan on
 9 behalf of the State of Montana.

10 MS. HARDING: Okay, great.

11 EXAMINATION BY

12 MR. MANGAN:

13 Q. Good afternoon, Mr. Finke.
 14 Can you hear me all right on the phone?

15 A. Yes.

16 Q. Okay, great.

17 Are you aware the State of
 18 Montana's filed a claim for contribution
 19 and indemnification against Grace?

20 A. Yes.

21 Q. And in this bankruptcy,
 22 obviously?

23 A. Yes.

24 Q. And a proof of claim.

1 Q. Is it your position that
 2 contribution and indemnification claims
 3 fit within the indirect PI definition?

4 A. Yes.

5 Q. Mr. Lewis had asked you a
 6 series of questions with regard to the
 7 treatment of Libby claimants' claims under
 8 the Plan and their claims specifically as
 9 to Maryland Casualty, the State of Montana
 10 and Burlington Northern. Do you recall
 11 that questioning?

12 A. Yes.

13 Q. I believe you testified --
 14 and obviously correct me if I'm wrong --
 15 that the Libby claimants' claims against
 16 the State that give rise to the State's
 17 claims against the debtors for
 18 indemnification or contribution go into
 19 the Trust.

20 MS. HARDING: Object to
 21 form.

22 Q. Is that your testimony?
 23 A. That the Montana -- that
 24 the State of Montana's claims for

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<p>1 settlement agreement in front of you 2 involving Commercial Union?</p> <p>3 A. Yes.</p> <p>4 Q. And there was a contractual 5 indemnity provision in there? Do you 6 recall that?</p> <p>7 A. Yes.</p> <p>8 Q. And we had a discussion as 9 to what type of claim that was and you 10 indicated that that was an insurer 11 indemnified TDP claim?</p> <p>12 MR. LIESEMER: Object to 13 the form.</p> <p>14 Q. Do you recall that?</p> <p>15 MS. HARDING: Object to 16 form and to the question to the 17 extent that it's maybe mixing 18 apples and oranges; I'm not sure. 19 I'm just confused.</p> <p>20 A. I believe -- I don't think 21 I identified it as such. I think I might 22 have agreed that it fit the definition 23 that's in the TDP.</p> <p>24 Q. Yes. I thought you said</p>	<p>1 form. To the extent you know, 2 but...</p> <p>3 Q. So would those be examples 4 of other contractual indemnity claims in 5 response to Mr. Plevin's question to you 6 of earlier today that are classified as 7 Class 6 claims?</p> <p>8 A. Yes, I believe they would 9 be.</p> <p>10 Q. Okay. And I think you 11 mentioned -- you reiterated here just a 12 moment ago that the classification of the 13 Fireman's Fund Insurance Company 14 contractual indemnity claim was something 15 that was under discussion, I think was the 16 term you used.</p> <p>17 A. Yes, sir.</p> <p>18 Q. Is that also true of the 19 contractual indemnity claims held by 20 settled asbestos insurance companies?</p> <p>21 MS. HARDING: Object to 22 form.</p> <p>23 A. Not to my knowledge.</p> <p>24 Q. With respect to the</p>
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<p>1 that's what it was, but maybe I'm wrong.</p> <p>2 A. Okay, maybe I'm wrong. At 3 this hour, it could go either way.</p> <p>4 Q. Well, I'm not sure what to 5 make of that. Maybe I should go fishing 6 here.</p> <p>7 What I'm driving at, is to the 8 extent that settled asbestos insurance 9 entities have contractual indemnity claims 10 against Grace under their respective 11 settlement agreements, those are 12 classified as Class 6 claims, are they 13 not?</p> <p>14 A. Yes.</p> <p>15 MR. LIESEMER: Object to 16 form.</p> <p>17 Q. That's why my client, One 18 Beacon, got a Class 6 ballot, I presume?</p> <p>19 A. Yes.</p> <p>20 Q. And that's why my other 21 client, Seaton, got a Class 6 ballot, 22 correct?</p> <p>23 A. Yes.</p> <p>24 MS. HARDING: Object to</p>	<p>1 Fireman's Fund Insurance Company claim, 2 when you say it's under discussion, do you 3 mean to suggest that it may be classified 4 differently than Class 6?</p> <p>5 MS. HARDING: Object to the 6 extent that it calls for 7 attorney-client, work product or 8 joint interest communications. If 9 you can answer without divulging 10 those, go for it.</p> <p>11 A. Yeah, I think that follows 12 from that, that it's some aspect that's 13 under discussion.</p> <p>14 Q. Is one of the other 15 classifications being considered Class 16 9?</p> <p>17 A. I don't feel I can answer 18 that.</p> <p>19 Q. Different subject.</p> <p>20 Earlier today I was asking you a 21 series of questions regarding Section 7.15 22 in the Plan. That's the insurance 23 neutrality provision. We had a lengthy 24 discussion about 7.15 and its interaction</p>

1 with 11.9, you'll recall?

2 A. Yes.

3 Q. That's the exculpation
4 provision.

5 A. Yes.

6 Q. You indicated that you had
7 some doubt, you thought there was some
8 other provision that you were thinking
9 about but couldn't recall that might --
10 I'm paraphrasing -- take precedence over
11 the insurance neutrality provision in
12 7.15. Do you recall that testimony?

13 A. I recall that, yes.

14 Q. Okay. Since or during one
15 of the many breaks we've had today, have
16 you been able to figure out what provision
17 it was that you were thinking of?

18 A. Yes, I believe so, and it
19 would not have the effect of overriding
20 the 7.15(a). The provision I was thinking
21 of related to the court retaining
22 exclusive jurisdiction over a number of
23 issues, but even with -- first of all,
24 that would not -- I don't think that would

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PP's
Obj:
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6 CI

7 one.

8 MR. BROWN: All right.
9 MS. HARDING: I think --
10 object to -- I'm just going to
11 object to the form of the question,
12 Mike, because I think your -- maybe
13 I'm wrong, but I think that your
14 questions are suggesting that he
15 testified that there was a
16 provision in the Plan that
17 overrode -- overrides Section
18 7.15(a) and I don't think that was
19 his testimony. He said he was
20 going to look for one and he said
21 he didn't find one.

22 MR. BROWN: The one he had
23 in mind was the one he just
24 testified to.

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THE WITNESS: Yes.

MR. BROWN: -- when he was
suggesting that there was an
additional section to Section 7.15
in the Plan.

A. Yes. Yes, that's the only

PP's
Obj:
R;BE

1 apply here. But especially with respect
2 to insurance issues, as you probably know,
3 the jurisdiction is not exclusive.

4 Q. That was the only other
5 provision?

6 A. Yeah, that was -- that is
7 the only one that I had in mind.

8 MS. HARDING: And object to
9 the form of your question with the
10 use of the term "other" because I
11 don't think that he testified that
12 there was --

13 MR. BROWN: I think he
14 mentioned that there was at least
15 one other provision, there might
16 have been two, and I'm just trying
17 to clarify whether the one he just
18 referred to involving the retention
19 of jurisdiction is the only other
20 provision.

21 MS. HARDING: That he was
22 thinking about.

23 MR. BROWN: That he was
24 thinking of --

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1 MS. HARDING: Yes, yes.

2 THE WITNESS: Correct.

3 MS. HARDING: Okay, sorry.
4 I just wanted to make sure we're
5 clear.

6 MR. BROWN: Thank you, Mr.
7 Finke.

8 MS. HARDING: Mr. Speights,
9 are you on?

10 MR. SCHIAVONI: Barbara, I
11 just had 10 minutes of questioning.
12 I can do it after Mr. Speights or
13 before, whenever you want. This is
14 Tanc Schiavoni.

15 MS. HARDING: Oh, Tanc, Mr.
16 Schiavoni.

17 MR. SCHIAVONI: I'll be
18 quick. I had to get off the line
19 to book a flight to Pittsburgh.

20 MS. HARDING: Is Mr.
21 Speights on the line?

22 MR. SPEIGHTS: I'm on, and
23 I don't mind if the gentleman wants
24 to go first.